

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION

Energy Heating, LLC, an Idaho limited liability company; Rocky Mountain Oilfield Services, LLC, an Idaho limited liability company,

Plaintiff/Counterclaim Defendants,

vs.

Heat On-The-Fly, LLC, a Louisiana limited liability company, and Super Heaters North Dakota, a North Dakota limited liability company,

Defendants,

Heat On-The-Fly, LLC, a Louisiana limited liability company,

Counterclaimant.

Heat On-The-Fly, LLC, a Louisiana limited liability company,

Third-Party Plaintiff/Counterclaim Defendant,

vs.

Marathon Oil Corporation,

Third-Party Defendant/
Counterclaimant.

Civil Case No. 4:13-cv-10

**SUPPLEMENTAL JURY
INSTRUCTION #2**

SLANDER AND ITS ELEMENTS

Energy Heating also asserts that Heat On-The-Fly engaged in slander in the course of interfering with Energy Heating's business relationship with Triangle Oil.

In order to find slander, the greater weight of the evidence must establish the

following essential elements.

Slander is a false and unprivileged statement, not in writing, which (1) is false; (2) is not privileged, that is, made with malice; (3) spoken to someone other than the plaintiff or the defendant; and (4) tends to directly injure the person in respect to that person's profession, trade, or business by either (a) something with reference to the person's profession, trade, or business that has a tendency to lessen its profits, or (b) causes actual damage by natural consequence.

As used in this instruction, malice means a desire to vex, annoy, or injure another person, or an intent to commit a wrongful act which consists of (1) a direct intention to injure another, or (2) a reckless disregard of the likelihood that the wrongful act will injure another person. Malice is not limited to spiteful, malignant, or revengeful disposition and intent but it does require a showing of wrongful and improper motive.